IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1166 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PATEL MANHARLAL POPATLAL - Petitioner(s)
Versus
DEPUTY COLLECTOR & 2 - Respondent(s)

==========

Appearance :
MS MOHINI BHAVSAR ON BEHALF OF BHARAT JANI for Petitioner,
MR M R MENGDEY ASST.GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/06/2007

ORAL JUDGMENT

1. Ms.Mohini Bhavsar, under the authority of Mr.Bharat Jani, learned counsel for the petitioner and Mr.M.R. Mengdey, learned Assistant Government Pleader for the respondents.

2. The petitioners, being aggrieved by the order dtd.22/10/1996 passed by the District Collector, Ahmedabad in Case No.CB/CTS/Vashi/896 of 1996, rejecting the petitioner's application for conversion of the land use, is before this Court with a submission that the order passed by the District Collector does not observe the directions issued by this Court in its order dtd.10/10/1994 passed in Special Civil Application No.10912 of 1994, nor any opportunity of hearing, leading evidence and produce rebuttal evidence was ever given to the petitioner.

3. Mr.Mengdey, learned Assistant Government Pleader for the respondents, however, submits that the order dtd.22/10/1996 is absolutely correct and the application was rightly rejected, because, much before the permission could be accorded, the petitioner had transferred the possession and the land use was also changed.

4. From the order dtd.22/10/1996 it appears that the land was restricted tenure and the petitioner wanted permission for non-agricultural use and its alienation. The application had been rejected on the ground that much before the permission could be accorded, the possession

of land has been handed over to “Bhagini Samaj” and non-agricultural use of the land has already commenced.

5. Order dtd.22/10/1996 does nowhere show that inquiry of any sort was made by the Dy.Collector, any spot inspection was made by the Collector or his representative, in presence of the petitioner or the petitioner was ever issued any notice that in view of the changed circumstances, why permission be not refused. It appears that behind the back of the petitioner, certain records were collected, certain inquiries were made and relying upon the said inquiry report, the Collector passed the final order. The procedure adopted by the Collector is unknown to law.
6. If an authority, tribunal or Court wants to use certain evidence collected by it against the interest of other party, then notice of such evidence is required to be given to the party, either to controvert it or to rebut the same.
7. In the present case, the rules have not been properly observed, therefore, order dtd.22/10/1996 cannot be allowed to stand. It deserves to and is accordingly quashed.
8. The parties present before the Court, shall appear before

the District Collector, Ahmedabad on 23/7/2007 and shall produce a copy of the judgement before the Collector enabling him to know as to what he is required to do. After the parties appear before the Collector, he shall proceed to decide the application taking into consideration the observations made aforesaid and in accordance with law, by a speaking order, preferably within a period of four months from the date of appearance of the parties.

9. The petition is allowed. Rule is made absolute. No costs.

(R.S. GARG, J.)

rafik